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7590	10/03/2003		EXAMINER	
EDWARD D MURPHY PATENT DEPARTMENT TW 199 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD TOWSON, MD 21286			BRAHAN, THOMAS J	
		ART UNIT	PAPER NUMBER	
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 21

Application Number: 09/187,358

Filing Date: November 6, 1998

Appellants: Mauer et al

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J. Bruce Hoofnagle  
For Appellant

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GROUP 3600

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 7, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement that there are no related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is adequate.

**(6) Issues**

The appellant's statement of the issues in the brief was correct, except that two of the rejection under 35 U.S.C. § 102 have been withdrawn.

**(7) Grouping of Claims**

Appellant's grouping of the claims as to have each claim stand or fall separately is correct.

**(8) ClaimsAppealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,192,012	Schafer et al	March 9, 1993
5,810,239	Stich	September 22, 1998
5,813,114	Blacket et al	September 29, 1998

**(10) New Prior Art**

No new prior art has been applied in this examiner's answer.

**(11) Grounds of Rejection**

The following grounds of rejection are applicable to the appealed claims:

Claims 1, 2, 7-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Blacket et al. Figure 8 of Blacket et al shows a conveyor for elongate components designed with a head and a shank, with a feed arrangement for feeding the components in a prescribed direction, comprising a transfer arrangement with a transfer region (occupied by rivet 217) into which the elongate components are fed from a feed duct (220) having a feed path for the heads, and a shank guiding duct and a biased catch element (leaf spring 229). This catch varies from the claims by not having a second element to bias it in place. However a leaf spring and a lever pivoted by a compression spring are art recognized equivalents. Therefore it would have been obvious to one of ordinary skill in the art to modify the conveyor of Blacket et al by substituting a pivoted spring biased lever for the leaf spring catch, as it is an art recognized equivalent which would work easily as well. The pins (260) of Blacket et al are displaceable positioning segments in a conveying duct, as recited in claims 9 and 10. The positioning segments (1460) of figure 24 have pivots axes, as recited in claim 11. They have a form functionally corresponding to the feed duct, and form a continuation thereof, as recited in claims 12 and 13. Figures 30-36 show split sleeves with a conical shape, as recited in claim 14.

Claims 1, 2, 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schafer et al. Schafer et al shows a conveyor for elongate components designed with a head and a shank, with a biased catch element (leaf spring 8). This catch varies from the claims by not having a second element to bias it in place. However a leaf spring and a lever pivoted by a compression spring are art recognized equivalents. Therefore it would have been obvious to one of ordinary skill in the art to modify the conveyor of Schafer et al by substituting a pivoted spring biased lever for the leaf spring catch, as it is an art recognized equivalent which would work easily as well.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schafer et al in view of Stich. Schafer et al shows the basic claimed nail conveyor, as detailed above. It varies from the claims by not showing the entire nail driver as to have a split sleeve for the conveying duct. Stich shows a similar nail gun with an attachment (6) for resiliently holding the nails adjacent the transfer region. It would have been obvious to one of ordinary skill in the art to provide the nail driver of Schafer et al with a split sleeve attachment, to hold the nails while advancing them through the transfer region, as taught by Stich.

**(12) New Ground of Rejection**

This examiner's answer does not contain any new ground of rejection.

**(13) Response to argument**

Appellant argues at the bottom of page 15 through page 16 of the brief, that Blacket et al teaches away from the invention as set forth in claim 1, as it has its catch element extending into the delivery passage. However the claim recites that the catch is external of a "transfer region" but fails to define an area for this region. The claim also fails to recite that the entire catch is external of the transfer region, or that it is always located external of the region, note that Figure 8 has it located close to, but not in the transfer region.

Appellant argues at page 17 of the brief, that there is no reasonable expectation of success with the modification made to Blacket et al in the rejections. However leaf springs and biased levers are functional equivalents, and a biased lever would easily work as well in the device of Blacket et al.

On page 18 of the brief the appellant argues that the catch element of Blacket et al does not have a locking face, as recited in claim 2. However the term locking face fails to recite a specific structure and reads on the portion of leaf spring 229 that engages the rivet heads. Appellant also states that claim 7 is specific to a catch element pivot axis and claim 8 is specific to a compression spring. However these are both conventional biased lever structures. Appellant also lists the specifics of claims 10 to 14 at the bottom of page 18, however, as detailed above in the rejection, Blacket et al has all of these features.

Appellant argues at the bottom of page 19 of the brief that the Schafer et al patent does not suggest deflection of spring member 8 upon engagement with each nail. This argument is not understood as the reference clearly shows the leaf spring as extending into path of the nail heads as to retain the nails in place while being advanced.

Appellant argues at the top of page 20 of the brief that Schafer does not include a locking face as recited in claim 2. However the drawing clearly shows the retaining spring 8 terminating with an angled face which faces the transfer region (3) and prevents the nails from backing into the feed area. Appellant also argues on page 20 that Schafer et al lacks a pivot axis for retaining spring 8. However the rejection states that as a biased lever, i.e. a lever with a pivot axis, is an art recognized equivalent, substituting it for the leaf spring would have been obvious to one of ordinary skill in the art.

Appellant argues the rejection under 35 U.S.C. § 103(a) based upon Schafer et al in view of Stich on page 22 of the specification by stating "that there is nothing in common between the structures of the Schafer patent and the Stich patent which would suggest or motivate one to combine the teachings of the two patents". However as both Schafer et al and Stich are nail guns, they do have a common environment. Column 5, lines 60-62, of Stich states that the disclosed nail guide can be used with single strike type nailing machines. The reference itself teaches its use and its advantages as it is designed to be an add-on implement for any type of nail gun.

**(14) Conclusion**

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KM  
JV

  
10/1/03  
THOMAS J. BRAHAN  
PRIMARY EXAMINER